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DEC 1 - 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Preemption of State and Local Zoning) MM Docket 97-182
and Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

To: The Commission

REPLY COMMENTS OF THE RADIO OPERATORS CAUCUS

The Radio Operators Caucus ("ROC") hereby submits its Reply Comments pursuant to the *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding, FCC 97-296, released August 19, 1997, which looks toward the adoption of rules preempting, under certain circumstances, state and local government restrictions on the construction of broadcast facilities.^{1/} As shown more fully below, ROC supports the comments of the National Association of Broadcasters and the Association for Maximum Service Television filed October 30, 1997 ("Joint Comments").

First and foremost, ROC strongly supports the view that preemption should be extended to all broadcast facilities. While the Commission in the NPRM has focused heavily on DTV facilities

^{1/} ROC is an informal group of more than 40 radio station owners with over 300 stations in more than 90 markets throughout the United States.

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because of the deadlines which have been established for initiation of DTV service, all broadcasters need relief from the sometimes unreasonable, uninformed or dilatory actions of local authorities. While the radio industry admittedly does not face the service-wide construction challenges that currently confront television, numerous radio stations which seek to improve their facilities, or which are forced to relocate for reasons beyond their control, face precisely the same sorts of difficulties at the local level as are anticipated in the implementation of DTV.

While ROC submits that, at a minimum, preemption should be extended to radio facilities displaced by DTV construction, ROC supports the view of the Joint Comments that such a limitation would invite confusion as to whether a given relocation is in fact required by DTV implementation, and would likely provide fertile ground for disputes, both genuine and contrived. A standard applicable to all broadcasters is essential to provide certainty and to prevent mischief.

ROC also supports the position that the Commission should preempt all state and local regulation of RF emission exposure. The Commission has adopted carefully-considered and detailed requirements in this area, and preemption is necessary to avoid problems that can arise from local authorities' lack of expertise concerning RF exposure and the risk that they may overreact to

local expressions of concern that are not justified by the facts. Similarly, it is appropriate that tower lighting and marking standards be preempted in light of the comprehensive regulatory scheme imposed by the FCC and the FAA. And while ROC agrees with the Commission's view that local restrictions based on electromagnetic interference are already preempted under existing law (see *NPRM* at Paragraph 12), expressing that preemption clearly in the form of a rule may help obviate any uncertainty or confusion in that regard on the part of local authorities.

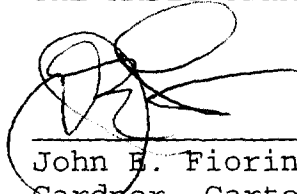
ROC is also strongly in favor of that portion of the proposed rules which would preempt any local restriction unless it is reasonable in terms of serving a clear health or safety objective when viewed in light of federal interests in promoting broadcasting and competition among electronic media. Restrictions based on aesthetic considerations are necessarily subjective, and the very nature of a broadcast tower exposes it to attack on aesthetic grounds. As the Joint Comments put it, "failure to preempt purely aesthetic regulations will be an exception that swallows the rule."

Finally, ROC supports the proposed mandatory timetables for local action; the proposal that arbitration supervised by the Commission be available to aggrieved broadcasters; and the provision for declaratory relief by the Commission on an

expedited basis in the event of an adverse decision at the local level. These elements are essential to ensure that the provision of broadcast service is not frustrated by unnecessary delay.

Respectfully Submitted,

THE RADIO OPERATORS CAUCUS

A handwritten signature in black ink, appearing to read "John E. Fiorini III", is written over a horizontal line.

John E. Fiorini III
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900E
Washington, D.C. 20005
(202) 408-7159

December 1, 1997